

**Security Council**

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**Letter dated 9 July 2013 from the Permanent Representatives of
Finland and Germany to the United Nations addressed to the
President of the Security Council**

For a number of years, the group of like-minded States on targeted sanctions (Austria, Belgium, Costa Rica, Denmark, Finland, Germany, Liechtenstein, Netherlands, Norway, Sweden and Switzerland) has endeavoured to further fair and clear procedures in the United Nations sanctions regimes. The group is concerned that public criticism of the regimes by human rights advocates, as well as various legal actions, risk affecting the implementation of United Nations targeted sanctions.

On 10 May 2013, the group proposed to the Security Council the extension of the Ombudsperson procedure for the Al-Qaida sanctions regime to other appropriate United Nations targeted sanctions regimes, on a case-by-case basis (see S/PV.6964). In particular, the group suggested considering the Somalia and Eritrea sanctions regime in the context of its renewal in July 2013. Other States, including members of the Security Council, have come out in support of this proposal.

On 17 June 2013, Finland and Germany organized a panel discussion entitled "Mainstreaming the Ombudsperson procedure into other targeted sanctions regimes: Somalia/Eritrea as a possible case?" The event was supported by the like-minded group.

We believe that this discussion was very interesting and useful. A summary of the discussion, which was prepared under our responsibility, is attached to this letter.

As the renewal of the Somalia and Eritrea sanctions regime is coming up in July 2013, the Security Council may wish to take into consideration the arguments made at the panel discussion on 17 June. The challenges which spurred the introduction of the Ombudsperson procedure in the Al-Qaida sanctions regime are also under way with respect to other sanctions regimes. More importantly, the underlying principles apply across the board. Security Council sanctions regimes that grant fair and clear review procedures will benefit from improved credibility and effectiveness.



We should be grateful if you would have the present letter and its annex circulated among the members of the Security Council and issued as a document of the Security Council.

(Signed) **Peter Wittig**
Ambassador Extraordinary and
Plenipotentiary
Permanent Representative

(Signed) **Jarmo Viinanen**
Ambassador Extraordinary and
Plenipotentiary
Permanent Representative

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On 17 June 2013, Finland and Germany organized a panel discussion entitled "Mainstreaming the Ombudsperson procedure into other targeted sanctions regimes: Somalia/Eritrea as a possible case?". The event was supported by the group of like-minded States on targeted sanctions (Austria, Belgium, Costa Rica, Denmark, Finland, Germany, Liechtenstein, Netherlands, Norway, Sweden and Switzerland).

The panel discussion on 17 June, designed to advance the debate in this context, brought together four experts: Andreas Zimmermann of the University of Potsdam in Germany, an expert in international law; the Ombudsperson for the Al-Qaida sanctions regime, Kimberly Prost; Annette Weber, head of the research division Middle East and Africa at the German Institute for International and Security Affairs; and Antti Pentikäinen, the Executive Director of Finn Church Aid.

Three points served to guide the debate: first, the need to promote uniform application of United Nations sanctions in various jurisdictions. Second, each sanctions regime and its underlying political situation is unique, and some sanctions regimes are more suitable for the extension of the Ombudsperson procedure than others. Third, an independent review mechanism, such as the Ombudsperson procedure, is not an automatism for lifting United Nations targeted sanctions.

On this basis, the panellists were asked to explore a number of questions. Is there a need to extend the Ombudsperson procedure to other sanctions regimes? Which sanctions regimes could be "appropriate", and — possibly — which would not? Should there be a differentiation between sanctions regimes that target individuals or companies that have no link to a State or Government, and those that in fact aim at changing State or Government behaviour? Would such a differentiation be practical?

Andreas Zimmermann set out the legal framework of the discussion. He acknowledged that United Nations targeted sanctions had been created in response to criticism of the widespread humanitarian consequences of comprehensive sanctions regimes against countries. Targeted sanctions, however, raised their own legal problems: without recourse to some form of independent review, the human rights of the persons concerned, especially due process rights, were in jeopardy. He noted that judicial review of United Nations targeted sanctions by domestic courts would continue in the absence of a United Nations mechanism. As a result, courts in various jurisdictions might invalidate the implementation of United Nations sanctions measures. This would put the universal application of United Nations targeted sanctions into question.

The Ombudsperson for the Al-Qaida sanctions regime, Kimberly Prost, emphasized that it is for the members of the Security Council to decide whether to extend the Ombudsperson procedure to other sanctions regimes. She explained that, for individuals subject to targeted sanctions other than in the Al-Qaida regime, a procedural recourse existed through the Focal Point. However, the Focal Point has no substantive role in the consideration of the delisting requests. By contrast, the Ombudsperson explores the facts of the cases brought before her and gives a reasoned recommendation to the sanctions committee. She bases her recommendation on an assessment whether, at the time of the recommendation, there is sufficient information to provide a reasonable and credible basis for continued listing. This, the

Ombudsperson emphasized, is not akin to a review of the Security Council's original listing decision.

Annette Weber set out the current political and security situation in Somalia and the Horn of Africa. She mentioned that the Somali opposition has a mixed track record: in some areas under opposition control, there exists a pattern of oppression and terror; in other places the opposition has managed to set up an efficient administration which breaks with traditional patterns of rule in Somalia. The new federal Government is aware of the need to find a way to engage parts of the opposition for the peace process to succeed.

Antti Pentikäinen assessed that, for certain Somali opposition actors, an avenue out of United Nations targeted sanctions could provide a valuable incentive to engaging constructively in the political process. He presented three cases in which efforts to engage the opposition had almost succeeded: in the first case, the opposition leader in question had been keenly interested in having United Nations sanctions against him lifted. In the second case, an opposition group had been ready to join the political process, only to find out that there was no consensus in the United Nations sanctions committee to lift the measures against it. In the third case, the fact that individuals leading a potential breakaway fraction were listed had hindered proper dialogue and contributed to the inability of those involved in the mediation process to keep the commitments made therein. This had resulted in further radicalization of the group.

The discussion that followed the panellists' presentations explored these aspects further. There were pointed comments opposing an extension of the Ombudsperson procedure to other sanctions regimes, arguing that further experience of the procedure was required. The United Nations targeted sanctions regimes were distinct, and it was not evident that the Ombudsperson procedure was appropriate for all of them. The Ombudsperson's role was not to address various actors' political function. Extending to other regimes her right to make recommendations, which could only be overruled by consensus in the sanctions committee or by referring a case to the Security Council, could overly complicate the Security Council's use of targeted sanctions as a dynamic political tool. On the other hand, the suggestion was made that a useful distinction could be to provide recourse to the Ombudsperson only to those individuals whose State/Government would be unlikely to approach the sanctions committee on their behalf ("diplomatic protection"), and who thus had no alternative means of obtaining a substantive United Nations review of the measures taken against them. Another question that was raised addressed the resource implications: was the potential legal and political gain worth the associated expenditure?

In response, panellists explained that legal challenges to various United Nations targeted sanctions regimes would persist as long as there was no independent United Nations review mechanism, such as the Ombudsperson procedure. The proposed distinction between "recourse for individuals through the Ombudsperson" and "recourse through Government" was seen as useful. Extending the mandate would not allow the Ombudsperson to question the way in which the Council designs sanctions regimes, nor to overturn the criteria for listing established by the Council. The political character of targeted sanctions would thus not be affected. The resources needed for extending the Ombudsperson procedure to other sanctions regimes would be limited: there was no need to establish a separate office for every United Nations targeted sanctions regime if the Security Council decided to extend the existing Ombudsperson's mandate to other regimes, on a case-by-case basis and as appropriate.